

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

RANJANA SHAHI

Petitioner,

Docket No.

v.

TRACY RENAUD; ALEJANDRO MAYORKAS; TEXAS SERVICE
CENTER, U.S. ATTORNEY GENERAL MERRICK GARLAND,
UNITED STATES; JOHN DOES I -10, JANE DOES I-IO; and ABC
AGENCY 1 -10,

Respondents,

PETITION FOR WRIT OF MANDAMUS

INTRODUCTION

The Petitioner, RANJANA SHAHI, (Petitioner) ,hereby petition this honorable Court for a writ of mandamus and for declaratory and injunctive relief, to compel the Respondents collectively and individually MERRICK GARLAND , ALEJANDRO MAYORKAS, TRACY RENAUD, TEXAS SERVICE CENTER and additionally and in the alternative as necessary, John Does 1 - 10, Jane Does 1-10, and A BC Agency 1 -10, the latter being presently unknown persons or agencies who are responsible for processing Petitioner's I-730, Refugee Asylee Relative Petition which was filed and received on May 14,2018 , under SRC1815850154, **As Exhibit-A .**

This action lies pursuant to law including the 5th Amendment due process clause and other provisions of the United States Constitution, the Mandamus Act (28 U.S.C. § 1361), the All-Writs Statute (28 U.S.C. § 1651), the Declaratory Judgment Act (28 U.S.C. § 2201) and the Administrative Procedures Act (5 U.S.C. § 551 et seq.).

This action challenges the unreasonable delay of the Respondents, and each of them individually, and/or one, more and/or all of such Respondents collectively, in adjudicating and processing the Petitioner's I-730 petition.

PARTIES

1. Petitioner, Ranjana Shahi, ("Petitioner") is a national of Nepal, whose asylum application was granted on April 27,2018 and filed I-730 petition for her husband Shilaj Wagle, which was received on May 15,2018 and is currently pending. Petitioner currently resides at 6403 Broadway 2 Fl, Woodside, NY 11377, which is within this District.

1. Petitioner, RANJANA SHAHI, A 208-174-656, a national of Nepal.
2. TRACY RENAUD is Acting Director of the United States of Citizenship and Immigration Services.

3. MERRICK GARLAND, U.S. Attorney General, U.S. Department of Justice.
4. ALEJANDRO MAYORKAS, Secretary, US Department of Homeland Security.
5. Texas Service Center, USCIS.
6. ABC Agency 1-10 are agencies of the United States government, presently unknown, which are or were responsible for some aspect or all aspects of processing the Petitioner's application for a visa.

JURISDICTION AND VENUE

7. Jurisdiction in this Court is proper pursuant to *inter alia* 28 U.S.C. §§ 1331, 1361, and 1651, and pursuant to 7 U.S.C. § 501 (Administrative Procedure Act). This Court has subject matter jurisdiction over this cause pursuant to 28 U.S.C. § 1331 (federal question statute), since this is a civil action arising under the Constitution and laws of the United States including, without limitation, provisions of the Immigration and Nationality Act, Title 8, § 1101 et seq., and all applicable regulations, policies, and procedures arising

thereunder. This Court may grant relief herein under federal laws including, without limitation, 28 U.S.C. § 1361 (Mandamus Act), 28 U.S.C. § 1651 (All Writs Act), 28 U.S.C. § 2201 (Declaratory Judgment Act), and under 28 U.S.C. § 701 et seq. (Administrative Procedure Act).

8. The Petitioner has exhausted his judicial remedies. The Petitioner has filed his I-730, Refugee Asylee Relative Petition and has provided the Respondents with documents that clearly establish that he has a right to the relief requested.

9. This action challenges only the pace and unreasonable delay in processing the Petitioner's adjustment of status application, not any actual decision or denial of relief by the agency or the granting or denial of a petition, and therefore the jurisdiction-stripping provisions of 8 U.S.C. § 1252 do not apply.

10. Pursuant to 28 U.S.C. § 1391 (e) venue is proper in this District, because Respondents operate in this District and Petitioner resides in this District.

ALLEGATIONS OF FACT

11. Petitioner, a native and national of Nepal, was granted principle Asylee in the United States.

12. Petitioner filed application on Form I-730, which was received on May 14, 2018.

13. Despite requests to the Respondents for information regarding the status of Petitioner I-485 application, there has been no resolution of the application. As of the date of the filing of this action, there has been no action on the applications.

14. Under the APA, Respondents have a non-discretionary and non-delegable duty to resolve outstanding matters, such as the instant application, within a reasonable time. 5 U.S.C. § 555 (b). This Court may compel any agency to act if agency action is unlawfully withheld or unreasonably delayed. 5 U.S.C. § 706 (1).

15. Pursuant to these provisions, the Respondents have a clear obligation to process and fully adjudicate the Petitioner's outstanding application, within a reasonable time. *See, e.g., Loo v. Ridge*, No. 04 CV 5553 (E.D.N.Y. March 14, 2007); *Yu v. Brown*, 36 F. Supp.2d 922, 925, 927-30 (N.M. 1999); *Panescu v. I.N.S.*, 76 F. Supp.2d 896, 901 (N.D. Ill. 1999).

16. Petitioner thus has a clear and indisputable right to the relief requested, to wit, the resolution of petition of I-730 application; and there is a plainly defined and peremptory duty on the part of the Respondents to do the act in question; and no other remedy is available to the Plaintiffs. Mandamus

relief is therefore appropriate. *In re Drexel Burnham Lambert, Inc.*, 861 F.2d 1307, 1312 (2d Cir. 1988); *Lovullo v. Froehlke*, 468 F.2d 340, 343 (2d Cir. 1972). Declaratory and injunctive relief are appropriate as well.

17. Among other rights, the Petitioners' right to due process of law and equal protection under the 5th Amendment have been and are being violated by Respondents' failures as described herein.

18. Respondents, despite having a duty to act within a reasonable time, have failed to process and adjudicate Petitioner's application in a timely manner and within a reasonable time.

19. Respondents' duty to process and adjudicate Petitioners' application in a reasonable time is a non-discretionary duty mandated by federal and judicial precedent.

20. Respondents' conduct in failing to process Petitioner's application and adjudicate his application in a reasonably timely manner has caused unnecessary and injurious delays to Petitioner, in violation of his rights.

21. Respondents has exhausted his/her administrative remedies and has determined that no such remedy exists.

Count I
Mandamus Action
28 U.S.C. § 1651

22. Petitioner repeats and re-alleges all of the above allegations as if separately set forth herein.

23. Respondents are charged with the mandatory responsibility of administering and implementing the Immigration and Nationality Act.

24. Respondents bear the sole responsibility for the timely adjudication of the Petitioner's application.

25. Respondents have failed to discharge their mandated duties.

26. As a result, the Petitioner has suffered and continues to suffer irreparable harm and damages entitling him to declaratory, injunctive and other relief.

27. Petitioner has exhausted all possible administrative remedies and is without any other adequate remedy at law.

Count II
Administrative Procedures Act
5 U.S.C. §§ 555 and 702 et seq.

28. Petitioner repeats and re-alleges all of the above allegations as if separately set forth herein.

29. By failing to render a timely decision on Petitioner's alien relative applications, Respondents have violated the Administrative Procedures Act

and this constitutes agency action that is arbitrary and capricious, and not in accordance with law.

30. Respondents have failed to discharge their mandated duties.

31. As a result, Petitioner has suffered and continues to suffer irreparable harm and damages entitling him to declaratory, injunctive and other relief.

Count III
Declaratory Judgment Act
28 U.S.C. § 2201

32. Petitioner repeats and re-alleges all of the above allegations as if separately set forth herein.

33. Petitioner contends that Respondents' actions and decisions relating to delays in the adjudication of his application are unconstitutional, violate the Immigration and Nationality Act, and are arbitrary and capricious, and seeks a declaration to that effect pursuant to 28 U.S.C. § 2201.

34. Respondents have failed to discharge their mandated duties.

35. As a result, Petitioner has suffered and continues to suffer irreparable harm and damages entitling him to declaratory, injunctive and other relief.

Count IV
Equal Access to Justice Act
5 U.S.C. § 504 and 28 U.S.C. § 2412

36. Petitioner repeats and re-alleges all of the above allegations as if separately set forth herein.

37. Costs and attorneys' fees will be sought pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412 (d), et seq.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully prays that this Honorable Court will grant him the following relief:

- i. Assume jurisdiction over this cause.
- ii. Declare that Respondents' failure to act is illegal, arbitrary, capricious, and an abuse of discretion.
- iii. Compel Respondents and their employees, servants, and agents to timely adjudicate, process, and resolve the Petitioner's outstanding I-485 Application to Register Permanent Resident or adjust status.
- iv. Award Petitioner attorney's fees, costs and other appropriate relief pursuant to the Equal Access to Justice Act; and
- v. Such other and further relief as this Court may deem just and proper.

Dated: New York, New York
July 13, 2021



Khagendra Gharti-Chhetry, Esq.
Attorney for Petitioner
Chhetry & Associates, P.C.
363 7th Avenue, Suite 1500
New York, New York 10001
(212) 947-1079

CERTIFICATE OF SERVICE

I, Khagendra Gharti-Chhetry, certify that on July 13, 2021, I served one set of **COMPLAINT; SUMMONSES IN A CIVIL ACTION AND CIVIL COVER SHEET** by electronically by ECF filing and by USPS mailing upon Attorney for Respondents and Parties at the following addresses:

1. United States of America
c/o U.S. Attorney for Eastern District of New York
271 Cadman Plaza East, 7th Floor
Brooklyn, NY 11201
2. Merrick Garland, U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530.
3. Tracy Renaud, Acting Director
U.S. Citizenship and Immigration Services
20 Massachusetts Avenue, N.W.
Washington, DC 20529
4. ALEJANDRO MAYORKAS, SECRETARY
U.S. Department of Homeland Security
245 Murray Lane, S.W.
Washington, DC 20528

5. Director, U.S. Citizenship and Immigration Services
Texas Service Center
P.O. Box 851488 – Dept. A
Mesquite, TX 75185

A handwritten signature in black ink, appearing to be 'Khagendra', written over a horizontal line.

Khagendra Gharti Chhetry, Esq
Chhetry & Associates, P.C.
363 7th Avenue, Suite 1500
New York, NY 10001
Tel.: (212) 947-1079
Fax: (212) 947-1081

EXHIBIT- A

THIS NOTICE DOES NOT GRANT ANY IMMIGRATION STATUS OR BENEFIT.

Receipt Number SRC1815850154		Case Type I730 - REFUGEE ASYLEE RELATIVE PETITION
Received Date 05/14/2018	Priority Date	Petitioner A208 174 656 SHAH, RANJANA
Notice Date 02/08/2019	Page 1 of 1	Beneficiary A215 622 692 WAGLE, SHILAJ

RANJANA SHAHI
6403 BROADWAY 2FL
WOODSIDE NY 11377

Notice Type: Transfer Notice

We have mailed an official notice about this case (and any relevant documentation) according to the mailing preferences you chose on Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative. This is a courtesy copy, not the official notice.

What the Official Notice Said

In order to speed up processing, we transferred the application or petition ("your case") listed above to the following USCIS office for processing:

TEXAS SERVICE CENTER, P.O. BOX 851488, Dept. A, Mesquite, TX 751851488

That office will notify you in writing when they make a decision on your case or if they need additional information.

If any of the above information is incorrect or you have any questions about the status of your case, please call the USCIS National Customer Service Center (NCSC) at 1-800-375-5283 or visit the USCIS website at www.uscis.gov (if you are hearing impaired, the NCSC TDD number is 1-800-767-1833). If you call us, please have your Alien Registration Number (A-Number) and/or the receipt number shown above. The receipt number is a tracking number for your case and will help with inquiries.

Processing time - Processing times vary by case type. Go to www.uscis.gov to see the current processing times listed by case type and office.

- View your case status on our website's Case Status Online page.
- You can also sign up to receive free email updates as we process your case.
- Most of the time your case is pending, the process status will not change. This is because we are working on cases that were filed before your case.
- When we make a decision on your case or if we need something from you, we will notify you by mail and update our systems.
- If you do not receive an initial decision or update from us within our current processing time, contact the NCSC at 1-800-375-5283 or visit our website at www.uscis.gov.

Please see the additional information on the back. You will be notified separately about any other cases you filed.

National Benefits Center
U.S. CITIZENSHIP & IMMIGRATION SVC
P.O. Box 648007
Lee's Summit MO 64064

USCIS Contact Center: www.uscis.gov/contactcenter



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